

June 22, 2005

«Name»  
«Title»  
«Company»  
«Address1»  
«Address2»  
«Citystzip»

Dear «Salutation»:

By legislation enacted in 2005 (SB 783, attached), the General Assembly directed the Virginia State Corporation Commission (“Commission” or “SCC”) “to analyze the implications of a requirement that it consider imposing a condition, when requested by certain localities, that proposed electrical transmission lines be installed underground.”

Specifically, the legislation requires the Commission, by January 1, 2006, to conduct an analysis of the effects on all affected persons of an amendment to § 56-46.1 of the Code of Virginia (“Code”) with implications for transmission line planning, application and approval processes, and to submit the results of its analysis to the Governor and to the chairmen of the Senate and House Committees on Commerce and Labor.

SB 783 asks the Commission to address a fundamental question: If Virginia’s localities could trigger the SCC’s consideration of transmission line undergrounding by requesting such consideration, how would it work, i.e., how would localities “request” such consideration, and how would the SCC “consider” it? More specifically: Who would come up with the details of the route, the design, and the cost estimate of the underground alternative?

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By way of background, the Commission's review of a utility's transmission line application is a formal proceeding; it is a docketed case, conducted under the authority of the Code of Virginia, and the Commission's Rules of Practice and Procedure. The Commission makes its final decision based upon an evidentiary record. That record is made up of the utility's application and the alternatives presented therein; any alternatives presented by respondents or the Staff; the testimony of witnesses—including public witnesses—supporting and opposing the application and alternatives; and the testimony of the SCC Staff expressing its view as to whether the application is in the public interest. A document summarizing the Commission's review process in these cases is attached.

The Commission has the authority *under current law* to consider alternatives to the transmission line routing that is proposed by a utility. That authority is set forth in Subsection E of § 56-46.1 of the Code. Historically, the Commission has exercised that authority by considering alternative line routing when these alternatives (i) take the form of a fully developed proposal, and (ii) are proposed by persons participating as parties to the Commission's proceeding in which the line application is being considered.<sup>1</sup> Significantly, Subsection E of § 56-46.1 is not proposed to be modified as part of SB 783. As a result, SB 783, as presently configured, neither adds to nor subtracts from the Commission's present authority to consider underground alternatives to the transmission line routing proposed by a utility in a proceeding before the Commission.

The critical question in this study, then, is the following: If the Virginia General Assembly enacted the concept proposal described in SB 783, how would the Commission change the procedures, if at all, under which it presently considers alternative transmission line routing pursuant to Subsection E of § 56-46.1?

With this background in mind, the Staff believes that SB 783 prompts several key threshold questions. These questions address the procedural and evidentiary “nuts and bolts” of how localities would “request” consideration of an underground routing, who would develop the details of the underground alternative, who would be the proponent of this underground alternative in the proceeding, and how the SCC, in turn, would “consider” it. They are as follows:

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<sup>1</sup> If the Commission determines that an alternative route merits full consideration, it can direct publication of the proposed route and notification to affected jurisdictions and landowners as provided in Subsection B of § 56-46.1 of the Code .

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1. Should a locality requesting the SCC's consideration of an underground transmission line alternative be required to participate as a formal party to the proceeding in which it proposes such an alternative, i.e., should it be required to be a Respondent pursuant to Rule 80 of the Commission's Rules (5 VAC-20-80)?<sup>2</sup> Explain.
2. Should any locality requesting the SCC's consideration of an underground transmission line alternative be obligated to develop and submit to the SCC a proposal detailing that alternative, providing evidentiary support for that proposal, and having the burden of proof therefore? If not, why not.
3. Should a locality requesting the SCC's consideration of an underground transmission line alternative be obligated to propose such an alternative not later than a date corresponding to a specific procedural milestone established in the docket's scheduling order? <sup>3</sup> If so, which procedural milestone? If not, why not?
4. Should the applicant utility, itself, have the obligation to develop an underground transmission line alternative if such an alternative's consideration by the SCC is requested by a locality? If so, what should be the locality's role in that alternative's development, if any? Additionally, should the cost of such an alternative's development be born entirely by the applicant utility? If not, why not.
5. Are there any additional procedural or evidentiary issues that the Commission should consider as part of this study? If so, please elaborate.

To assist the Commission, the Staff requests that persons and entities having an interest in this study, submit detailed responses to the preceding questions.

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<sup>2</sup> Status as a Respondent would, for example, subject a locality to discovery under Rule 250 (5 VAC 5-20-250) and Rule 260 (5 VAC 5-20-260) of the Commission's Rules of Practice and Procedure. Additionally, a locality appearing as a Respondent in a proceeding would likely be required to appear by counsel pursuant to the provisions of Rule 30 (5 VAC 5-20-30) of the Commission's Rules.

<sup>3</sup> As an example, § 56-259 D of the Code presently requires localities to request the SCC's consideration of joint use of right of way by the date that public comments on a electric transmission line application are to be filed.

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Accordingly, if you or representatives of your organization are interested in participating in this study, please respond to the above questions by July 12, 2005. Responses to these preliminary questions should be submitted in writing to Mr. W. Timothy Lough, Ph.D., P.E., Special Projects Engineer, Division of Energy Regulation, P.O. Box 1197, Richmond, Virginia 23218, P.O. Box 1197, Richmond, Virginia 23218. It is also requested that an electronic version of your response be e-mailed in Word format to [Tim.Lough@scc.virginia.gov](mailto:Tim.Lough@scc.virginia.gov).

It is anticipated that responses to these questions may be posted on the Commission's web site as publicly accessible documents.

Finally, if you are not participating in this study, but you or representatives of your organization wish to remain on the mailing list, please e-mail notification to that effect to [Tim.Lough@scc.virginia.gov](mailto:Tim.Lough@scc.virginia.gov).

Sincerely yours,

W. Timothy Lough, Ph.D., P.E.  
Special Projects Engineer

Attachments